

**REMARKS**

In the Office Action, the Examiner rejected claims 1-4. By the present Response claims 1-4 have been amended. Additionally, the drawings and the title have been amended. These amendments have been made for the purpose of clarification. Furthermore, new claims 5-14 have been added and they are fully support throughout the specification. No new matter has been added by these new claims. Upon entry of the amendments, claims 1-14 will be pending in the present application. In light of the amendments and the following remarks, reconsideration of the rejections and allowance of the pending claims are respectfully requested.

In the Office Action, the Examiner objected to the drawings under 37 C.F.R. § 1.83(a). Specifically, the Examiner objected to the drawings for failing to show plastic material in the cross-sectional views. By the present Response, Applicant has amended Figure 3 to illustrate this feature. Specifically, Applicant has amended Figure 3 to illustrate, in cross-hatching, a plastic material. Applicant respectfully asserts that this amendment is purely for clarification purposes and that no new matter has been added by this amendment. As stated by the Examiner, the claims clearly indicate that the plastic material is recited in the claims. Moreover, Applicant directs the Examiner's attention to the last sentence on page 6 of the application which states, "[t]he closing device can be made for example from thermoplastic injection-molded parts cleaved or welded together." In light of the amendments to the drawings and the textural support within the specification, Applicant respectfully requests withdrawal of the objection.

In the Office Action, the Examiner objected to the title as not being descriptive. Although Applicant may not necessarily agree with the Examiner's contention regarding the title, in the interest of expediting prosecution, Applicant has nonetheless amended the title. In light of this amendment, Applicant respectfully requests that the Examiner withdraw the rejection.

In the Office Action, the Examiner objected to the specification for failing to provide proper antecedent basis for the claimed subject matter under 37 C.F.R. § 1.75(d)(1).

Specifically, the Examiner objected to the use of the term “clipped” within claim 4. Applicant apologizes for the typographical error and has amended claim 4 to recite, “thermoplastic injection-molded parts *cleaved* or welded together.” As amended, the specification provides proper antecedent basis for the claimed subject matter. Applicant supports this contention by directing the Examiner’s attention to the final line of the “Detailed Description” located on page 6 of the application. With the amendment and the text of the application in mind, Applicant respectfully requests that the Examiner withdraw the objection.

### **Rejections Under 35 U.S.C. § 112, Second Paragraph**

#### **1. First Rejection**

In the Office Action, the Examiner rejected claim 4 under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed had possession of the invention. Specifically, the Examiner stated that, “[t]here is no description of clipping parts of the closing device together.” In light of the discussion above, Applicant respectfully asserts that the amendment to the claim 4 obviates the Examiner’s rejection. Withdrawal of the rejection is respectfully requested.

#### **2. Second Rejection**

In the Office Action, the Examiner rejected claims 1-4 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Examiner rejected the claims for reciting the terms “sealing means” and “control means” because these terms allegedly do not clearly indicate if the application of 35 U.S.C. § 112, sixth paragraph is intended. By the present Response, Applicant has amended claims 1, 2 and 3 and eliminated the recitation of the term “means”. Accordingly, Applicant respectfully asserts that the Examiner’s rejection has been rendered moot.

In the Office Action, the Examiner also rejected claim 1 for reciting the phrase “in particular”. Although Applicant may not necessarily agree with the Examiner’s contention,

Applicant has nonetheless amended claim 1 to delete this recitation. Accordingly, Applicant respectfully asserts that the Examiner's rejection has been rendered moot.

In the Office Action, the Examiner rejected claim 1, as well as the claims that depend therefrom, for reciting the phrase, "on a leak tight connection of the closing device." Specifically, the Examiner questioned as to what structure this phrase represented. Claim 1 has been amended in light of the Examiner's comments. Withdrawal of the rejection is respectfully requested.

### **Rejections Under 35 U.S.C. § 103**

In the Office Action, claims 1-4 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Brill (U.S. Pat. No. 1,977,302) in view of Krone (DE 40,23,978). Specifically, the Examiner stated:

Brill teaches the claimed closing device except for cam at the journals and bores. Krone teaches a hinge having journals and bores forming cams. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of (sic) hinge having journals and bores forming cams. Doing so allows for manipulation of the lid to any desired angle.

Applicant respectfully traverses the rejection. The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (PTO Bd. App. 1979). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the combination includes *all* of the claimed elements, but also a convincing line of reason as to why one of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985).

**The Cited References Do NOT Disclose All of the Recited Features of the Claims**

**1. Claims 1-4**

Applicant respectfully asserts that the cited references, either taken alone or in combination, do not disclose, teach or suggest each and every feature recited in the instant claims. For example, independent claim 1 recites, *inter alia*, “a device comprising a sleeve.” Within the Office Action, the Examiner does not even address this feature as being disclosed by the cited references. Moreover, a thorough review of the cited references also indicates that neither of the cited references discloses this feature.

A review of the Brill reference indicates that the reference merely discloses a closure having pintles 14 whereby the pintles secure the closure to the neck 7 of the body. *See* Brill, Fig 1; *see also* Brill, column 1, lines 31-52. In other words, the closure merely presents a top surface and a pair of flanges that are affixed to the neck of the container. The neck of the container, as illustrated by the uniform cross-hatching of Figures 2 and 4 of the Brill reference, is an integral feature of the bottle. *See id.*, Figures 2 and 4. A mere top cover cannot be the sleeve as recited in the instant claim. Again, the closure of the Brill reference affixes to the integrated neck of the container and only presents a top cover. Accordingly, Applicant respectfully asserts that the Brill reference is absolutely devoid of a “device that comprises a sleeve.” Furthermore, the Krone reference also does not teach, suggest or disclose a “device comprising a sleeve.” As will be further discussed below, the Krone reference discloses a pivotable flap for a telecommunications box. *See* Krone, Title (English translation); *see also* Krone, Abstract (English translation). Again, there is no reason to believe that the cited Krone reference discloses a sleeve by any means whatsoever.

Additionally, independent claim 1 recites, “providing the bottle with a *new orifice* that can be closed by a shut-off integral with the sleeve.” The cited reference, either alone or in combination, do not teach, suggest or disclose this recited feature of claim 1. As stated above, the Brill reference discloses a closure that merely abuts against over a pre-existing integral orifice. Accordingly, to suggest that the Brill reference discloses a new orifice would be to read the cited reference in a contrary manner than presented. Moreover, the hinged

telecommunication box of the Krone reference is incapable of satisfying the deficiencies of the Brill reference. Thus, Applicant respectfully asserts that independent claim 1 and its respective dependent claims 2-4 are patentable over the cited references taken alone or in combination.

**The Examiner has NOT Presented a Prima Facie Case for Combining the Cited References.**

Even assuming, *arguendo*, that the Examiner was able to present a reference combination that disclosed all of the features of a rejected claim, the Examiner must still present a convincing line of reasoning as to why the skilled artisan would combine the cited references to reach the rejected claim. With respect to the present application, Applicant respectfully asserts that the cited references lack this motivation.

Applicant respectfully reminds the Examiner that when prior art references require a selected combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gained from the invention itself, i.e., something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. *See Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir.1988). One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

In other words, the artisan viewing only the collective teachings of the references, must find it obvious to selectively pick and choose various elements and/or concepts from the cited references to arrive at the claimed invention. *See Ex parte Clapp*, 227 U.S.P.Q.972 (B.P.A.I. 1985). Moreover, the Federal Circuit has warned that the Examiner must not, “fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher.” *In re Dembiczak*, F.3d994,999, 50 U.S.P.Q.2d 52 (Fed. Cir. 1999) (quoting *W. L. Gore & Assoc., Inc. v. Garlock Inc.*, 721 F.2d 1540, 1553, 220 U.S.P.Q. 303, 313 (Fed. Cir. 1983)). Avoiding hindsight reconstruction is especially important regarding less technologically complex inventions, where the very case with which the invention can be

understood may prompt one employ such hindsight. *See id.* Applicants respectfully assert that the Examiner, in support of the present rejections, has, at best, employed impermissible hindsight to reach the instant claims.

There is no reason to believe the ordinary artisan would combine the closure of the Brill reference with the telecommunications box cover of the Krone reference. Indeed, the easily manipulatable closure of the Brill reference would teach against combination with the assumably larger and bulkier telecommunication box cover of the Krone reference. Again, Applicant respectfully asserts that the Examiner has, at best, viewed the references in light of the present application and combined the references only with the knowledge and hindsight gained from the application itself. Such hindsight reconstruction, Applicant respectfully asserts, is improper.

Based on the foregoing, Applicant respectfully asserts that the pending claims, claim 1-14 are patentable over the cited reference. Allowance of the pending claims is respectfully requested.

#### **The Krone Reference is Non-Analogous Prior Art**

To support a valid § 103 rejection, the Examiner must also present appropriate references to support the rejection. Specifically, the Examiner must present “analogous” prior art. *See* M.P.E.P. §2141.01(a). To rely on a reference as a basis for rejection of an applicant’s invention, the reference must either be in the field of the applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned. *In re Oetiker*, 977 F.2d 1443, 1446; 24 U.S.P.Q.2d 1443, 1445 (Fed. Cir. 1992). A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor’s endeavor, it is one which, because of the matter with which deals, logically would have commended itself to an inventor’s attention considering his problem. *Wang Laboratories, Inc. v. Toshiba Corp.*, 993 F.2d 858 26 U.S.P.Q.2d 1767 (Fed. Cir. 1993). Applicant respectfully asserts that the Examiner has not satisfied the threshold burdens regarding the Krone reference as applied to the rejected claims.

Beginning of with the first prong of the test, the Krone reference, as extensively discussed above, relates to telecommunication boxes and a hinge therefore. This clearly is not even remotely within the same field as bottle-top closures. Turning to the second prong, the cited reference cannot reasonable be held to be relating to the same problem as the instant application. The cited reference, throughout the specification, speaks to the need for a simpler and quick closing device for beverage bottles. By contrast, the few translated sentences of the Krone reference relate to the simple manufacture and mounting as well as the durability of the allegedly novel telecommunication cover. *See Krone, Advantage (English translation)*. To read that the Krone reference is any way relates to the problem of the instant application would be to read into the Krone reference teachings that are not disclosed therein.

Based on the foregoing, Applicant respectfully asserts that the Examiner has improperly presented the Krone reference is non-analogous art and should be withdrawn. Withdrawal of the rejection is respectfully requested.

#### **Attachments**

Attached hereto is a marked-up version of the changes made to the drawings and claims by the current amendment. The attached page is captioned “**VERSION WITH MARKINGS TO SHOW CHANGES MADE**”.

**Conclusions**

In view of the remarks and amendments set forth above, Applicant respectfully requests allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: 4/21/03



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**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

Please amend the application as follows:

**IN THE DRAWINGS**

Please amend the drawings, specifically Figure 3, as indicated in red-ink on the sheet attached hereto.

**IN THE TITLE**

Please amend the title to read, "QUICK OPENING CLOSURE FOR SMALL LIQUID CONTAINERS".

**IN THE CLAIMS**

Please amend the claims to read as follows:

1. (Twice Amended) A closing device adaptable to a glass or thermoplastic container, comprising: a neck closable by a stopper forced into the neck or screwed or clipped or crimped to the side wall of the neck while compressing a seal onto the upper end of the neck, the device ~~consisting~~ comprising of a sleeve comprising an internal channel having an axis of symmetry that opens at one end ~~on a~~ having a leaktight connection of the closing device with respect to the neck of a container and at the other end in a sliding-contact surface which is a sector of a cylinder or a portion of a sphere, having an axis of symmetry of revolution that intersects the axis of symmetry of the internal channel of the sleeve at right angles, providing the bottle with a new orifice that can be closed by a shut-off plate connected to a caliper which pivots, via the ends of its two parallel arms, about two journals integral with the sleeve, on which the arms pivot by means of a bore, ~~the device being characterized in that~~ wherein the journals and the bores form cams that enable the pressure of the shut-off plate on the sliding-contact surface to be varied and ~~in particular~~ the pressure of the sealing portion ~~means~~ to be varied when the new orifice is closed using a control portion ~~means~~.

2. (Twice Amended) The closing device as claimed in claim 1, ~~characterized in that comprising a sealing portion means having~~ consists a seal with a flexible lip integral with the new orifice, shaped essentially as a frustum of a cone of revolution, while the shut-off plate comprises, in the area that covers the new orifice, a small spherical cap with a diameter roughly the same as that of said orifice and with a radius of curvature of the spherical cap that is much greater.

3. (Twice Amended) The closing device as claimed in claim 1, ~~characterized in that a wherein the control portion means is comprises~~ a lever integral with the parallel arms of the caliper.

4. (Twice Amended) The closing device as claimed in claim 1, ~~characterized in that wherein~~ the closing device is produced from thermoplastic injection-molded parts ~~clipped~~ cleaved or welded together.

Please add the following new claims:

5. (New) A closure for small liquid containers, comprising:

a body having an internal fluid flow path, comprising:

an attachment portion, the attachment portion adapted to sealingly engage  
with an opening of the container; and

a cover portion, the cover portion including a sliding member sheathingly  
disposed therein, the sliding member being actuable from a first  
position to a second position, wherein the first position allow  
access to the container and the second position seals the container.

6. (New) The closure as recited in claim 5, further comprising a guide path for directing the sliding member.

7. (New) The closure as recited in claim 5, wherein the sliding member comprises an arcuate surface.

8. (New) The closure as recited in claim 6, wherein the guide path presents an arcuate profile.

9. (New) The closure as recited in claim 5, wherein motion of the sliding member is restricted to a planar direction with respect to the cover portion.

10. (New) A closure for small liquid containers, comprising:  
a body having an internal fluid flow path, the body being sealingly secured to the a neck of the container; wherein the body comprises an orifice, the orifice configured to provide access to the container;  
a journal integrally disposed about the body; and  
a cap portion pivotably coupled to the body via the journal, the cap portion having an arcuate surface adapted to sealingly mate with the orifice thereby sealing the container.

11. (New) The closure as recited in claim 10, wherein the cap portion comprises a handle.

12. (New) The closure as recited in claim 10, wherein the journal comprises a camming surface.

13. (New) The closure as recited in claim 10, wherein the body thereadably engages with the container.

14. (New) The closure as recited in claim 10, wherein the cap portion comprises a notch and the journal comprises a tab, wherein the notch and tab correspondingly mate to releasably secure the cap portion in an open position.